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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 8018 of 2001
Date of decision: 22.8.2007

Hem Raj Shram ...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Salil Bali, Advocate for the petitioner.

Mr. Arvind Mittal, Additional Advocate General, Punjab

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RAJESH BINDAL, J.

The petitioner has approached this Court praying for quashing of impugned order dated May 5, 1998 (Annexure P/2).

Vide impugned order the petitioner being senior most Superintendent Grade-II was granted current duty charge of the post of Superintendent Grade-I, which had fallen vacant on April 30, 1998 on account of superannuation of Shri Tarsem Lal, Superintendent Grade-I. However, while granting the current duty charge a condition was put in that the same shall be in his own pay scale and petitioner would not be entitled for any seniority or pay in the higher scale.

Briefly the facts, as stated in the petition, are that petitioner joined service with the respondents as Clerk on January 10, 1966. He was promoted as Senior Assistant on July 10, 1978 and was further promoted as Superintendent Grade-II on June 14, 1996. On account of vacancy having arisen on retirement of Shri Tarsem Lal, Superintendent Grade-I, the petitioner, being senior most Superintendent Grade-II, was required to have been considered and promoted regularly on the post of Superintendent Grade-I, however, as no DPC was held and petitioner was merely granted current duty charge vide impugned order dated May 5, 1998 with the stipulation that petitioner shall not be entitled the pay of the higher post

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even though he was required to work thereon. While discharging duties of the higher post Superintendent Grade-I, on current duty charge, petitioner even retired from service on May 31, 2000. The pay scale of Superintendent Grade-I was higher than the pay scale of Superintendent Grade-II as the same was Rs. 2200-4000 as against Rs. 2000-3500, which was later on revised to Rs. 7220-11660 as against Rs. 6400-10640 in the case of Superintendent Grade-II.

On the other hand, controverting the claim made by the petitioner, respondents in the written statement filed by them submitted that because of certain dispute pending regarding the roster point, regular promotions could not be affected as the DPC could not be held. Without clearance of incumbent by the DPC, regular promotion was not possible. The DPC could be held on July 12, 2000 and by that time petitioner had already been retired.

I have heard learned counsel for the parties and perused the paper book as well as judgments cited.

Relying upon the earlier order passed by this Court in Civil Writ Petition No. 7615 of 2001 Jai Krishan Batish Vs. State of Punjab and others, SLP against which was dismissed by Hon'ble the Supreme Court on November 21, 2003 (Annexure A-2) and further an order passed by this Court in COCP No. 589 of 2006 Brahm Parkash Pathak Vs. Jarnail Singh, decided on December 4, 2006 whereby petitioner therein was forced to invoke the contempt jurisdiction of this Court on account of failure of the respondents in implementing the identical order passed by this Court in Civil Writ Petition No. 1956 of 2003 decided on August 9, 2004 in terms of earlier order passed in Jai Krishan Batish's case supra. Learned counsel for the petitioner submitted that merely because the respondents were not able to hold DPC for one reason or the other, petitioner, who, was admittedly senior most Superintendent Grade-II and was granted current duty charge of Superintendent Grade-I, cannot be denied pay scale of higher post on which he was required to work. The higher post carried higher responsibilities. He further submitted that while deciding the identical claim put by the petitioner in Jai Krishan Batish's case, this Court had relied upon an earlier Division Bench judgment of this Court in **Jagar Singh and another Vs.**

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State of Haryana and others **2003(1) R.S.J. 795** wherein in identical claim put by the petitioners therein was allowed by this Court noticing the fact that on the higher post , of which current duty charge was given to the incumbents, they were required to perform additional responsibilities. In Brahm Parkash Pathak's case supra, where this Court by order dated August 9, 2004 followed the earlier order passed by this Court in Jai Krishan Batish's case, on account of failure of the respondents therein to implement the order of this Court, Brahm Parkash Pathak had to file the contempt petition. In COCP respondent was held guilty of willful disobedience of the order of this Court and the relief admissible to the petitioner therein was granted. On the other hand, learned counsel for the respondents submitted that petitioner having approached this Court after retirement and not immediately when the order granting him current duty charge was passed, his prayer does not deserve to be considered as it is to be presumed that he was not aggrieved against the order imposing the condition of non entitlement of higher pay scale. However, this contention of the learned counsel for the respondents is to be noticed and rejected keeping in view the fact that the cases of Jai Krishan Batish and also Brahm Parkash Pathak, (supra) the factual position was identical as in both the cases petitioners therein had approached this Court after their retirement from the post.

Accordingly, while accepting the prayer made by the petitioner, the condition put in the impugned order to the extent that petitioner will not be entitled to pay and allowances of the post of Superintendent Grade-I for which he was given the current duty charge, is quashed and it is directed that petitioner shall be entitled to pay admissible to the post of Superintendent Grade-I during the period he worked as such. The arrears of pay be calculated and paid to the petitioner within three months from the date of receipt of certiried copy of this order.

The writ petition is disposed of in the manner as indicated above with no order as to costs.

August 22, 2007 **(Rajesh Bindal)**
Pka **Judge**